



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

**Social Services Legislation Amendment (Cashless Debit
Card) Bill 2017**

Submission to the Senate Standing Committee on Community Affairs

October 2017

National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples (National Congress) is the national representative body for Aboriginal and Torres Strait Islander Australians. National Congress is a leader and advocate for protecting and advancing the wellbeing and empowerment of Aboriginal and Torres Strait Islander Peoples, and for securing our social, economic, political, cultural and environmental futures.

National Congress has created one of the largest networks of our Peoples in the country. With almost 9000 individual members and 180 organisational members, these national peak bodies and community organisations further contribute the membership of tens of thousands of our Peoples to the National Congress movement. We acknowledge and pay respect to our Ancestors, our Elders and the diversity of Traditional Owners across this ancient land and its waters.

Introduction

To close the gap on Indigenous disadvantage, Aboriginal and Torres Strait Islander communities across Australia must take responsibility for their own affairs. National Congress objects to the passing of the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* ("the Bill") as it is overtly punitive and removes our right to self-determination.

Many of the social problems faced by First Peoples today are the result of past coercive and racist government policies. The impacts of policies such as the Stolen Generations; the forced removal of Traditional Custodians from their lands; relocation of Indigenous peoples to reservations and missions; Assimilation; stolen wages; the Northern Territory Intervention amongst others have caused ongoing sorrow and inter-generational trauma. The destruction of land, sacred sites, cultures and languages coupled with racial discrimination have led our people to feel as if their lives are worthless. These sentiments lead many individuals to turn to substance abuse, gambling or crime, and contribute to elevated rates of family violence and abuse.

We stress the enormous role which feelings of disempowerment play in driving Aboriginal and Torres Strait Islander people towards destructive behavior. The solutions to these social problems do not lie in mandatory restrictions on the financial decision making of individuals. Instead, evidence-based research strongly indicates that effective policies that achieve desired outcomes to 'close socioeconomic gaps or the broader social, economic, cultural and political aspirations of Indigenous peoples,' are those which 'strengthen the capacity of Indigenous peoples to exercise genuine decision making and to implement those decisions.'¹ National Congress appreciates Indigenous Affairs Minister Nigel Scullion's recent statements regarding family violence, "we know that community-based, culturally-appropriate solutions are required to reduce the rate of family violence experienced by Aboriginal and Torres Strait Islander women and children."²

¹ <http://www.austlii.edu.au/au/journals/NgiyaTLaw/2012/4.pdf>

² <https://ministers.pmc.gov.au/scullion/2017/825018-family-violence-prevention-legal-service-nt>

National Congress opposes any legislative policy which disproportionately limits or removes First Peoples' rights to self-autonomy, enjoyment of a private life, privacy, social security and freedom from discrimination. Whilst acknowledging that this bill is not intended to form policy for our First Peoples *alone*, we do however represent the poorest, most disadvantaged and most marginalised peoples in Australia. Further, in the two cashless debit card trial areas Ceduna and the East Kimberley regions, 69% and 91% (respectively) of welfare recipients are Aboriginal. It is therefore imperative that our views on this matter are respected and acted upon in good faith. We must entrench the words of the Indigenous Affairs Minister in federal policy:

“Economic empowerment is at the heart of our work with Indigenous communities and leaders. It is the basis of better lives and futures for First Australians, no matter where they live, and it is making links to culture and country even stronger.”³

Congress urges financial skills programs be made available to build the capacity of individuals and families to better manage their finances, and supports voluntary income management, giving individuals the choice to seek help in structuring and protecting their finances.

The Redfern Statement

The Redfern Statement is an urgent call for a more just approach to Aboriginal and Torres Strait Islander Affairs and is led and signed by a group of Aboriginal and Torres Strait Islander Peak organisations across Australia. It emphasizes that First Peoples continue to experience unacceptable disadvantage; that the challenges confronting Aboriginal and Torres Strait Islander people continue to be isolated to the margins of the national debate; that Federal Government policies continue to be made for, and done to, rather than with, Aboriginal and Torres Strait Islander people; and that the transformative opportunities for Government action are yet to be grasped.⁴

It outlines principles of engagement with Aboriginal and Torres Strait Islander peoples and National Congress urges the Committee to reflect upon its words when assessing the validity of the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* or any piece of legislation which affects the lives of Aboriginal and Torres Strait Islander peoples.

The Redfern Statement offers a way forward that differs from Indigenous policy development and implementation in recent decades. National Congress stresses that Aboriginal and Torres Strait Islander leaders, communities, and organisations know what works and serve as highly effective partners in the implementation of legal reform.

National Congress maintains that any reform which affects the lives of Aboriginal and Torres Strait Islander peoples must consider the views and experiences of Aboriginal and Torres Strait Islander communities and families, and involve active and culturally appropriate consultation and co-operation with our communities. The failure of policies such as the Intervention and Stronger Futures to achieve any meaningful and sustainable change for our

³ <https://ministers.pmc.gov.au/scullion/2017/speech-2017-naidoc-week-event-ilc-iba-aiatsis-nitv-and-healing-foundation>

⁴ <http://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-Final.pdf>

peoples demonstrates that the Australian Government must work with us, instead of merely doing things to us.

In the spirit of the Redfern Statement, National Congress urges the Committee to consider the important joint statement led by the four peak Aboriginal organisations in the Kimberley calling on the State and Federal Governments to work with Aboriginal people to create a better, more prosperous future for all on October 2, 2017.⁵

The United Nations Declaration on the Rights of Indigenous Peoples

National Congress supports the *United Nations Declaration on the Rights of Indigenous Peoples* ('the Declaration') which affirms the right of the Aboriginal and Torres Strait Islander Peoples to be self-governing and autonomous. We call attention to:

- The right to participate in decision-making in matters that would affect our rights, through our chosen representatives;
- The requirement for Australia to demonstrate good faith by obtaining free, prior and informed consent before adopting or implementing legislative or administrative measures that may affect our Peoples;
- The right to engage freely in economic activities while maintaining and developing our own political, social and economic systems and institutions.

The Declaration reaffirms existing legal obligations already found in international human rights treaties and applies these rights and standards to the lives and circumstances of Indigenous peoples and our communities. National Congress urges the Federal Government to uphold the Minister of Indigenous Affairs' statement on the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: 'I look forward to continuing an ongoing dialogue with all First Australians... so that together we can ensure that *our agenda continues to be consistent with the Declaration.*'⁶

Failure to align with broader Federal Government policy regarding Indigenous Affairs

The continuation and expansion of the Cashless Debit card undermines the Prime Minister's words and ongoing commitment to close the gap on Indigenous disadvantage. In its approach to any legislative instrument or policy which affect Aboriginal and Torres Strait Islander Peoples, National Congress urges the federal Government to revisit the statements made by Prime Minister Malcolm Turnbull at the Closing the Gap speech to parliament:⁷

*"A few weeks after I became the Prime Minister, I crossed paths with Dr Chris Sarra. I asked him what three things we could do in Indigenous policy that would truly make a difference.... This is what he said: **Firstly, acknowledge, embrace and celebrate the humanity of Indigenous Australians. Secondly, bring us policy approaches that***

⁵ <http://klc.org.au/news-media/newsroom/news-detail/2017/10/02/joint-statement-calls-for-new-approach-to-aboriginal-affairs>

⁶ <https://ministers.pmc.gov.au/scullion/2017/celebrating-10th-anniversary-united-nations-declaration-rights-indigenous-peoples>

⁷ <https://www.malcolmtturnbull.com.au/media/speech-to-parliament-on-the-2016-closing-the-gap-report>

nurture hope and optimism rather than entrench despair. And lastly, do things with us, not to us. Do things with us, not to us.”

The continuation and expansion of the cashless debit card also undermines the Federal Government’s commitment to the empowerment agenda.⁸ The implementation of the empowerment model has been widely valued as building autonomy and independence as well as providing a platform for Aboriginal and Torres Strait Islander communities to work in genuine partnership with the federal government. It ‘aims to increase Indigenous ownership and give people a greater say in decisions that affect them’.⁹ National Congress urges the federal government to align the cashless debit card bill with its broader approach to Indigenous Affairs policy.

Social Services Legislation Amendment (Cashless Debit Card) Bill 2017

National Congress objects to the passing of the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*. The expansion of the cashless debit card will effectively punish welfare recipients irrespective of whether they have issues with “habitual abuse and associated harm resulting from alcohol, gambling and illegal drugs”.¹⁰ The Debit Card Bill repackages the worst aspects of the income management policy introduced with the Northern Territory Emergency Response,¹¹ continued with the ‘BasicsCard’ in the Stronger Futures package¹² and the ‘Healthy Welfare Card’ proposed by *The Forrest Review: Creating Parity*.¹³ The cashless debit card similarly continues to punish the majority for the problems of the few; exacerbates perceptions of disempowerment; encourages discrimination by government authorities toward Aboriginal and Torres Strait Islander Peoples.

National Congress is aware of various impacts of the BasicsCard in the Northern Territory which are echoed by those who have been subjected to the cashless debit card:

- being unable to pay for second-hand goods;
- being unable to purchase goods at markets (and therefore being forced to purchase more expensive products);
- being forced to pay additional fees or meet minimum spend limits;
- being unable to use the card on public transport;¹⁴and
- experiencing stigma and shame due to being marked out as a welfare or income management recipient whenever they make a purchase.¹⁵

⁸ Empowered Communities Design Report p. iii and 23: <http://empoweredcommunities.org.au/f.ashx/EC-Report.pdf>.

⁹ Empowered Communities Design Report p. iii and 23: <http://empoweredcommunities.org.au/f.ashx/EC-Report.pdf>.

¹⁰ Explanatory Memorandum, Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (Cth) 2.

¹¹ Luke Buckmaster, Diane Spooner and Kirsty Magarey, ‘Income management and the Racial Discrimination Act’ (Parliamentary Library Parliament of Australia, 2012) 8.

¹² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human rights scrutiny report, Stronger Futures in the Northern Territory Act 2012 and related legislation* (2013) 45.

¹³ See Recommendation 5, in Department of Prime Minister and Cabinet, *The Forrest Review: Creating Parity* (Canberra: Australian Government, 2014), 107-8.

¹⁴ J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (Kensington: University of New South Wales, 2014), 122.

¹⁵ *ibid*

National Congress has recommended in the past that welfare reform policies and programs be targeted to each local community's needs in active partnership and engagement with the community.¹⁶ The diversity of Aboriginal and Torres Strait Islander Peoples, tribes and clans must be recognised, respected and considered when developing and implementing policies. We support overarching strategies to advance First Peoples' autonomy and prosperity and sustain the development of Aboriginal Torres Strait Islander People and our communities. National Congress endorses the body of evidence that shows that the key to building capacity and achieving sustained benefit is properly funded investment in programs and services, developed in genuine collaboration with our communities.

National Congress supports the submission made to the Committee by the MG Corporation who represent the Traditional Owners of the large areas in the East Kimberley region.¹⁷ Lawford Benning, the Chairperson of MG Corporation and a Director of Binarri-binyja yarrowoo Aboriginal Corporation – the backbone for Empowered Communities in the East Kimberley - was originally supportive of the cashless debit card trial in Kununurra. He has since withdrawn his support of the program considering the Government's failure to deliver on the following key commitments:

- (a) The local Indigenous community will be provided with sufficient support to deliver wrap around services for alcohol, drug and employment issues prior to the introduction of the Cashless debit card;
- (b) The local Indigenous community will be empowered to assess and review local service providers for the wrap around services and, if necessary, shift the funding and support to a more effective provider; and
- (c) The local Indigenous community will be given delegated authority to easily assess and remove Cashless Debit card recipients from the trial without the process being intrusive.

According to the submission made to the Committee by MG Corporation, some recipients would rather not be part of the trial and have removed themselves from all Centrelink benefits. The submission further states that the government failed to draw on 'well-established representative structures for the purposes of consultation, which demonstrates a continuation of the government's top-down approach to the development and implementation of policy without properly engaging Indigenous Australians.'¹⁸

Flawed Evaluation of the Trial

National Congress is concerned by reports that the evaluation of the cashless debit card trial has fallen short of best practice, as outlined by the Deputy Director of the Australian National University's Centre for Aboriginal Economic Policy Research, Janet Hunt. Hunt professes that the initial Orima evaluation 'suffers from recall bias, uses flawed weightings for the two

¹⁶ National Congress of Australia's First Peoples, *Statement to the Senate Standing Committee on Community Affairs on conditions affecting Aboriginal communities in the Northern Territory including the proposed Stronger Futures in the Northern Territory Bill (2011) and accompanying Bills* (Redfern: February 2012).

¹⁷http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CashlessDebitCard/Submissions

¹⁸ *ibid*

locations and fails to consider crucial external factors that may be simultaneously improving conditions in Indigenous communities.¹⁹ Hunt questions the validity of methodology used in the final Orima evaluation. These concerns have also been outlined by Eva Cox who is concerned with the survey design, the interview process and the ethical approach to the process.²⁰ National Congress submits that the roll out of mandatory cashless debit cards across Australia would be irresponsible considering the criticisms of the evaluation and without substantial evidence affirmed by the intended beneficiaries that personal positive change has occurred.

Discriminatory nature of the Bill

The Department of Social Services supplied estimates during the Senate Community Affairs Legislation Committee Public Hearing into the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015* on the 11th of September 2015 that in the first two planned trial areas, Ceduna and the East Kimberley regions, 69% and 91% (respectively) of welfare recipients were Aboriginal. It follows that the cashless debit card trial like the Stronger Futures BasicsCard before it, is indirectly discriminatory.²¹

Under international human rights law, where a measure impacts a group disproportionately, it establishes prima facie that there may be discrimination.²² National Congress raised this issue with regards to the Stronger Futures regime: ‘although income management has been extended to include all Australians, the majority of those affected on welfare are Aboriginal people and hence the measure continues to discriminate against Aboriginal people.’²³

National Congress submits that the cashless debit card is very similar to the existing BasicsCard under the Stronger Futures measures. We maintain that the restriction of welfare payments cannot be rationally connected nor proportional to the stated objective of the Bill because the evaluations of the BasicsCard under the Stronger Futures measures have shown that the policy does not work.²⁴ The Parliamentary Joint Committee on Human Rights found, in relation to Stronger Futures, that the income management regime was discriminatory and was not a reasonable and proportionate measure.²⁵ The Debit Card model represents an even

¹⁹ Hunt, J ‘The Cashless Debit Card: Does it Really Prove Success?’ *The Centre for Aboriginal Economic Policy Topical Issue* (No. 2/2017), p. 1.

²⁰ Cox, Eva ‘Much of the data used to justify the welfare card is flawed’ *The Guardian*, 7 September 2017: <https://www.theguardian.com/commentisfree/2017/sep/07/much-of-the-data-used-to-justify-the-welfare-card-is-flawed>.

²¹ ‘Indirect discriminatory actions are those that occur when a term, condition or requirement is imposed generally that is unreasonable and has a disparate impact on people of a particular race’ – from Luke Buckmaster, Diane Spooner and Kirsty Magarey, ‘Income management and the Racial Discrimination Act’ (Parliamentary Library Parliament of Australia, 2012) 8.

²² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human rights scrutiny report, Twenty-seventh report of the 44th Parliament* (2015) 26.

²³ National Congress of Australia’s First Peoples, *Statement to the Senate Standing Committee on Community Affairs on conditions affecting Aboriginal communities in the Northern Territory including the proposed Stronger Futures in the Northern Territory Bill (2011) and accompanying Bills* (Redfern: February 2012) para 55.

²⁴ J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (Kensington: University of New South Wales, 2014)

²⁵ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human rights scrutiny report, Stronger Futures in the Northern Territory Act 2012 and related legislation* (2013) 61.

more dictatorial measure in that it restricts a higher proportion of income (80% versus 50 to 70% under income management) and everyone receiving a working-age payment in the trial areas becomes a participant.

The Parliamentary Joint Committee on Human Rights Committee noted in their human rights review of the Stronger Futures measures that income management in the form of payment restrictions did not have the beneficial effects that were sought.²⁶ They highlighted that the Department of Families, Housing, Community Services and Indigenous Affairs' ("FaHCSIA") 'Evaluating New Income Management in the Northern Territory, First Evaluation Report' into income management found 'little evidence to support claims that compulsory income management has brought about behavioural changes on a significant scale'.²⁷ FaHCSIA's Final Evaluation Report also found that:

- The evaluation could not find any substantive evidence of the program having significant changes relative to its key policy objectives, including changing people's behaviours.
- There was no evidence of changes in spending patterns, including food and alcohol sales, other than a slight possible improvement in the incidence of running out of money for food by those on Voluntary Income Management, but no change for those on compulsory income management.
- There was no evidence of any overall improvement in financial wellbeing, including reductions in financial harassment or improved financial management skills.
- [R]ather than promoting independence and the building of skills and capabilities, New Income Management in the Northern Territory appears to have encouraged increasing dependence upon the welfare system, and the tools which were envisaged as providing them with the skills to manage have rather become instruments which relieve them of the burden of management.²⁸

Capacity building

National Congress urges the federal Government to collaborate with First Peoples to carry out a cost-benefit-analysis of the roll-out of the cashless debit card including a review of the employment ratio in the two trial sites; an assessment on the local economy as well as a review on the changes to the cost of living since the beginning of the trial. National Congress believes that building capacity within communities saves the Government and taxpayer resources in the long run.

The Way Forward

National Congress contends that compulsory income management has failed. Rather than haphazard policy experimentation, National Congress calls for the focus to be on a voluntary income management policy that is based on Aboriginal Torres Strait Islander community decision making, provides wraparound support services and values the choice of the

²⁶ Parliamentary Joint Committee on Human Rights, Parliament of Australia, Human rights scrutiny report, Twenty-seventh report of the 44th Parliament (2015) 23.

²⁷ Ibid, citing J Rob Bray et al., *Evaluating New Income Management in the Northern Territory: First Evaluation Report*, XIX.

²⁸ Ibid XXII.

individual to opt out. In 2009, the Australian Human Rights Commission (AHRC) published draft guidelines ‘to provide practical assistance to Parliament and the Government in designing and implementing income management measures that protect and are consistent with the Racial Discrimination Act’.²⁹ National Congress supports these criteria within the guidelines:

- to ensure that any limitation on rights is justified for policy makers to engage First Peoples communities in the design and implementation of measures;
- the income management measures should not involve automatic quarantining, the voluntary/opt in approach should be considered, and
- it should include additional support programs that address the rights to food, education, housing, and provide support for welfare recipients, safe houses for women and men, alcohol and substance abuse programs.³⁰

As Stronger Futures Evaluations have highlighted, voluntary income management has had positive outcomes for individuals and families that have chosen to be part of such programs.³¹ They also found that ‘it tended to work... where an individual was very specifically identified as having a problem—then, not only were they income managed but that was part of a group of services being provided to the person—and where the person was willing to change.’³²

This outcome is supported by results of research by the UK Government that has recognised that coercive policies are inappropriate and has moved to a behaviour change model.³³ Behaviour change models take into consideration the competing priorities that may undermine attempts to change behaviour. There are three necessary components for behaviour change, capability, motivation, and opportunity.

Considering the cuts to funding of Aboriginal and Torres Strait Islander organisations through the 2014/2015 budget and the Indigenous Advancement Strategy,³⁴ irrespective of the success of the Debit Card Bill, National Congress calls for the current willingness by government to support community organisations to decide on the front-line services and programs to be extended across Australia.

Recommendations

National Congress of Australia’s First Peoples recommends that:

- Compulsory income management schemes are replaced with voluntary schemes;
- Community led front-line services and programs are extended across Australia;

²⁹ Australian Human Rights Commission, *Draft guidelines for insuring income management measures are compliant with the Racial Discrimination Act*, op. cit., 5-6.

³⁰ Ibid 18-19.

³¹ Evaluation report Ibid, xxi.

³² Bray in the transcript, 6

³³ Susan Michie, and Robert West, “Behaviour change theory and evidence: a presentation to Government”. *Health Psychology Review* 7, no. 1 2013, 1-22.

³⁴ National Congress of Australia’s First Peoples, *Submission to the Senate Standing Committees on Finance and Public Administration, Inquiry into the Commonwealth Indigenous Advancement Strategy Tendering Processes* (Redfern: June 2015).

- Voluntary schemes must include community led wraparound support services including drug and alcohol; financial counselling; diversionary programs for young people; men and women’s support services; housing and homelessness services and parenting services.
- Community-led approaches to job creation are developed such as the APO NT model for reform of remote employment services.³⁵

³⁵ http://www.amsant.org.au/apont/wp-content/uploads/2017/07/RDES-Summary_online.pdf